

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (hereinafter referred to as "Department") is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than **15 days prior to the close of the written comment period**. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person **on or before 5:00 p.m., November 6, 2006**. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407, 32921 and 34261.5 of the Food and Agricultural Code, and to implement, interpret or make specific sections 32921, 35161, 35162, 35163, 35164, 35166, 35167, 35168, 35169, 35170, 35171, 35784, 35231, 38181, 38191 and 39211 of said code, the Department is considering amending Articles 13, 14, 14.5, 14.6, 14.7, 14.8 and 21 of Chapter 1, Division 2, Title 3, of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Milk and Dairy Food Safety Branch
Personal Licenses; Fluid Milk Composition Testing Methods:

Existing Law, Food and Agricultural Code sections 32921, 34261.5, 35161, 35162, 35163, 35164, 35166, 35167, 35168, 35169, 35170, 35171, 35784, 35231, 38181, 38191 and 39211 set forth the requirements for the application, examination and licensure for a pasteurizer's license, tester's license, sampler's and weigher's license, technician's license, and the requirements to test fluid milk composition.

To implement the above-referenced statutes, the Department has in place regulations under Articles 13, 14, 14.5, 14.6, 14.7, 14.8 and 21 of Chapter 1, Division 2, Title 3, of the California Code of Regulations.

This proposal updates these regulations to clarify the application forms and requirements for persons applying for examination and licensure for processing milk or milk products in California. This proposal also updates the fluid milk compositional

testing standards initiated (in part) by a petition received from the Dairy Institute of California dated October 24, 2002.

This proposal also makes nonsubstantive wording, grammatical, and organizational changes for clarity purposes.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations for persons applying for examination and licensure in California to process milk or milk products.

There are comparable federal regulations in 21 CFR (2005) Part 131 pertaining to standards of identity for milk and cream.

The Department, by regulation, may adopt standards for California for the testing of milk or cream pursuant to Food and Agricultural Code sections 34231 and 34261.5. Pursuant to Food and Agricultural Code section 32921, the standards for testing methodology for milk and cream are consistent with standards utilized by the U.S. Food and Drug Administration and the United States Department of Agriculture. The standards utilized by both state and federal governments are specified in the 17th Edition of the Standard Methods for the Examination of Dairy Products and the 18th Edition of the Official Methods of Analysis of the Association of Official Analytical Chemists International, which are incorporated by reference in this proposal.

FISCAL IMPACT STATEMENTS

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Department has made an initial determination that this proposed regulatory action would not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The following compliance requirements, as amended by this proposal, are projected to result from the proposed action:

(1) Paperwork: Application forms are required for persons applying for licensure as a pasteurizer operator, tester, sampler and weigher, or technician. A detailed list,

including the form numbers, is included in the rulemaking file. Application fees are assessed pursuant to Food and Agricultural Code 35231.

(2) Reports and records: Licensed technicians are required to maintain Bacteriological Record Sheets and laboratories are required to maintain Milk and Cream Test Records. Record keeping is a standard business practice and therefore the Department does not believe this existing requirement will impose any adverse economic impact upon businesses.

In making these determinations, the Department has not considered alternatives that would lessen any adverse economic impact on businesses and invites the public to submit such proposals during the written comment period. Submissions may include the following considerations:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- The consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance standards rather than prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

Cost Impacts on Private Persons or Entities: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The following compliance requirements as amended by this proposal are projected to result from the proposed action:

(1) Paperwork: Application forms are required for persons applying for licensure as a pasteurizer operator, tester, sampler and weigher, or technician. A detailed list, including the form numbers, is included in the rulemaking file. Application fees are assessed pursuant to Food and Agricultural Code 35231.

(2) Reports and records: Licensed technicians are required to maintain Bacteriological Record Sheets and laboratories are required to maintain Milk and Cream Test Records. Record keeping is a standard business practice and therefore the Department does not believe this existing requirement will impose any adverse economic impact upon businesses.

Effect on Housing Costs: None

Finding of Necessity for Report: The Department finds that it is necessary for the health, safety, and general welfare of the people of the state that this regulation requiring a report apply to businesses.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing (if a hearing is requested from the public), or during the public comment period.

INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing (if a hearing is requested) or during the public comment period upon request from the Department of Food and Agriculture, 1220 N Street, Room A-170, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact persons named below.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations are to be addressed to the following:

Name: Kristen Dahl, Dairy Program Coordinator
Address: Department of Food and Agriculture
Milk and Dairy Food Safety Branch
1220 N Street, Room A-170
Sacramento, CA 95814
Telephone No.: (916) 654-1981
Fax No.: (916) 654-1274
E-mail address: KDahl@cdfa.ca.gov

Inquiries concerning the rulemaking process are to be addressed to the following:

Name: Nancy Grillo, Associate Analyst
Address: Department of Food and Agriculture
1220 N Street, Room A-116
Sacramento, CA 95814
Telephone No.: (916) 651-7280
Fax No.: (916) 653-4249
E-mail address: NGrillo@cdfa.ca.gov

Written comments, facsimiles or e-mails regarding this proposal are to be addressed to the following:

Name: Kristen Dahl, Dairy Program Coordinator
Address: Department of Food and Agriculture
Milk and Dairy Food Safety Branch
1220 N Street, Room A-170
Sacramento, CA 95814
Telephone No.: (916) 654-1981
Fax No.: (916) 654-1274
E-mail address: KDahl@cdfa.ca.gov

Website Access:

Materials regarding this proposal can be found at <http://www.cdfa.ca.gov>